

and a porous polymer phase attached to the ceramic phase at an interphase zone (i.e., a zone where the polymer phase infiltrates the pores of the ceramic phase). Method Claims 23 and 24 recite methods for producing composite scaffolds having a porous polymer phase, formed by foaming a polymer solution, which interlocks with a porous ceramic body where the polymer solution has infused into the ceramic body.

The Vyakarnam Patent teaches a polymer foam having pores that are at least partially filled with ceramic particles that have been "added to the foams during processing, adsorbed onto the surface [of the foams] or back filled into the foams after the foams are made." (see Col. 17, lines 31-37). The Vyakarnam Patent does not teach the presence of an interphase zone, as is recited in Claim 1 of the present application. The Vyakarnam Patent also does not teach a polymer foam that interlocks with a ceramic body, nor does it teach that the polymer solution of which the foam is made can be infused into the pores of a ceramic body, as is recited in Claims 23 and 24 of the present application.

Secondly, the Examiner has rejected Claims 1-4 and 6-22 as being obvious under 35 U.S.C. § 103(a) over U.S. Patent No. 5,084,051 to Tormälä et al. ("the Tormälä Patent") in view of the Vyakarnam Patent. Applicants file herewith a Statement of Common Ownership, stating that the present application and the Vyakarnam Patent were owned by the same entity (i.e., Ethicon, Inc.) at the time that the invention was made. As provided for in 35 U.S.C. 103(c), such a declaration is effective to overcome a § 103(a) rejection, since the Vyakarnam Patent constitutes prior art only under § 102(e).

Further, the Examiner has rejected Claims 18-22 and 25-28 under 35 U.S.C. 103(a) over the Vyakarnam Patent. Applicants submit that the Statement of Common Ownership filed with the present Response is sufficient to overcome the rejection of these claims, as discussed in the preceding paragraph.

Finally, the Examiner has rejected Claims 1-4 and 6-24 as being unpatentable because of obviousness-type double-patenting over Claims 1-23 of U.S. Patent No. 6,626,950 to Brown et al. ("the Brown Patent"), which has the same assignee as the present application. The Examiner states that the composite scaffold of Claim 1 of the present application encompasses the prosthetic implant of Claim 1 of the Brown Patent, and that, therefore, the claims are not patentably distinct. Accordingly, an appropriate Terminal Disclaimer is submitted herewith.

It is believed that a fee of \$110 is due for the submission of the Terminal Disclaimer and that a separate fee of \$110 is due for the one-month extension of the period for response to the Office Action. The Examiner is hereby authorized to charge these fees to Deposit Account No. 501402. If any additional fees are due, including extension and petition fees, the Examiner is hereby authorized to charge such fees to Deposit Account No. 501402.

Respectfully Submitted,



By: William Smith
Reg. No. 46,459

McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, NJ 07102
Telephone: (973) 622-4444, Ext. 4368
NWK2: 1199586.01